

**CHAPTER 69. INTERNAL OPERATING PROCEDURES OF THE
COMMONWEALTH COURT OF PENNSYLVANIA**

ORGANIZATION AND ASSIGNMENT OF JUDGES

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Source

The provisions of this Chapter 69 adopted July 14, 2012, effective June 5, 2012, 42 Pa.B. 4450, unless otherwise noted.

ORGANIZATION AND ASSIGNMENT OF JUDGES**§ 69.101. Classification of Judges; Definitions.**

For the purpose of these Internal Operating Procedures, the following terms shall have the meanings indicated:

“Assigned Judge” means a judge of the Commonwealth who has been assigned to serve this Court.

“Commissioned Judge” means a judge serving as a member of this Court by gubernatorial appointment or, pursuant to election, during an elective term as a member of this Court.

“Duty Judge” means the Judge currently designated for service by the duty roster established under § 69.121.

“Judge” shall include (1) each Commissioned Judge (2) each Senior Judge and Assigned Judge with respect to matters on which the Senior Judge or Assigned Judge has been designated to sit, and (3) each Assigned Judge with respect to designation as a Duty Judge.

“Mediation Judge” means a Judge of the Court, assigned on a periodic basis by the President Judge to conduct mediations under § 69.501 (Mediation).

“Senior Judge” means a Judge, formerly elected as a member of this Court or another court of the Commonwealth, who has retired and is designated to sit as a Senior Judge on panels of this Court, whether or not also designated to serve as a Duty Judge.

Source

The provisions of this § 69.101 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (377838).

§ 69.102. Court Officers; Definitions.

“Chief Legal Counsel” means the officer appointed by this Court to provide legal support and counsel to the Court and to manage the Office of Chief Legal Counsel, as described in Pa.R.A.P. 3702.1.

“Prothonotary” means the officer appointed by this Court in accordance with Pa.R.A.P. 3111 to administer the clerical duties and responsibilities of the business of the Court as described in Pa.R.A.P. 3702. This includes overseeing the receipt, docketing, and maintenance of all documents filed with the Court, the scheduling of the Court’s argument sessions, and the maintenance of caseload inventory and statistics.

Source

The provisions of this § 69.102 adopted January 17, 2020, effective immediately, 50 Pa.B. 657.

§ 69.111. Courts En Banc and Panels; Number of Judges Assigned.

An en banc Court shall consist of no more than seven Commissioned Judges. Panels of the Court shall consist of three Judges, except in the circumstance of a two-member panel in accordance with Pa.R.A.P. 3102(b).

Source

The provisions of this § 69.111 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (377838).

§ 69.112. Courts En Banc and Panels; Composition.

(a) The President Judge shall structure the judicial membership of en banc Courts and panels to provide for rotation of Judges. Before the day of argument, Court personnel shall not identify the judicial membership of en banc Courts and of panels to any other persons.

(b) The President Judge may designate Judges to serve on a special court en banc or panel to hear election law matters, appellate or original jurisdiction, on an expedited basis.

Source

The provisions of this § 69.112 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.121. Duty Rosters; Establishment.

The President Judge shall annually establish a duty roster, which shall, on a weekly basis, provide for the assignment to each Judge, when designated as Duty Judge by the duty roster, all matters required by law or deemed necessary by the President Judge for evidentiary hearing, oral argument or disposition on briefs or otherwise. The duty roster normally shall exclude weeks during which regular argument sessions of the Court are scheduled. Court personnel shall not identify any designated Duty Judge, in advance of sitting, to any other person.

Source

The provisions of this § 69.121 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.122. Location of Proceedings.

All evidentiary hearings and arguments assigned to a Judge shall be conducted at the seat of the Court in Harrisburg unless ordered to be heard elsewhere or by a method specified under § 69.124.

Source

The provisions of this § 69.122 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.123. Duty Rosters; Availability.

Each Duty Judge shall be present in Harrisburg or otherwise available from 8:00 a.m. on the Monday commencing the Duty Judge's duty week and remain available until 7:59 a.m. on the following Monday and shall make the Prothonotary and Chief Legal Counsel aware of where the Duty Judge can be reached when not at the Pennsylvania Judicial Center during regular hours. The Duty Judge shall be in charge of making administrative decisions when the President Judge is not available by telephone communication, but the President Judge shall be consulted if major decision making is required.

Source

The provisions of this § 69.123 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.124. Video or Teleconference Proceedings.

A Judge may conduct a proceeding by use of video or telephone conference pursuant to an order fixing the argument date and the time.

Source

The provisions of this § 69.124 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.125. Case Assignments.

The President Judge may assign a matter within the Court's original jurisdiction to a particular Judge. Any Judge so assigned (a) may be relieved of other responsibilities during the pretrial, trial and decision processes, and (b) shall be responsible for the management of the case by such authorized procedures as the Judge shall elect to apply, including a pretrial order under § 69.313.

Source

The provisions of this § 69.125 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369584).

§ 69.126. Emergency Applications.

(a) An emergency application is defined as an application filed during non-business hours, including holidays and weekends. Filing of emergency applications outside of normal business hours will be allowed only when both of the following conditions are present:

(1) The application will be moot unless a ruling is obtained prior to noon of the next business day; and

(2) The application is being filed within two business days of the filing of the order sought to be reviewed.

(b) An emergency application shall include the following:

(1) An explanation of why an order of this Court is necessary, time sensitive and satisfies the threshold requirements set forth in (a)(1)—(2); and

(2) An explanation of how service has been perfected upon the opposing party or, if service has not been made, a summary of the efforts to perfect service or explanation of why service is impossible or impracticable; and

(3) Unless already docketed with this Court:

(i) a stamped “filed” copy of the relevant common pleas court order being appealed, as well as a copy of the notice of appeal that will be filed with this Court; or

(ii) a copy of the relevant petition for review, whether addressed to this Court’s appellate or original jurisdiction; and

(4) The appropriate filing fee or a sufficient affidavit to proceed in forma pauperis.

(c) The filing of an emergency application should be made by contacting this Court’s Prothonotary or designee, at one of the phone numbers provided in (c)(2), who will accept the papers by the most expeditious means available.

(1) The Court officer accepting the filing shall contact the Duty Judge to make arrangements for consideration and disposition of the emergency application. If the Duty Judge is not available, the emergency application shall be referred to the President Judge and then to the other Judges in descending order of seniority, if the President Judge is not available.

(2) The telephone number of the Court officer accepting the filing of emergency applications shall be made available through the Court’s after hours telephone message system (717-255-1600 or 717-649-5153).

Source

The provisions of this § 69.126 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (369584) and (363235).

APPELLATE JURISDICTION

§ 69.201. Permission to Appeal; Interlocutory Orders.

The Chief Legal Counsel shall present each petition for permission to appeal, together with opposing briefs and any recommendation, to the Duty Judge for appropriate action. In the absence of a recommendation by the Chief Legal Counsel, the disposition of such petitions shall follow the procedure for petitions for reargument, stated in § 69.291.

Source

The provisions of this § 69.201 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363235).

§ 69.211. Petition for Review; Clarification.

When the Prothonotary receives a written communication that evidences an intention to appeal an adjudication of a state administrative agency but does not conform to the rules for an appellate petition for review, the Prothonotary shall time-stamp the written communication with the date of receipt. The Prothonotary shall advise the party by letter (1) of the procedures necessary to perfect the appeal and (2) that the date of receipt of the communication will be preserved as

the date of filing of the appeal if that party files a fully conforming petition for review within 30 days of the date of the Prothonotary's letter. If the party fails to file a fully conforming petition for review within that period, the Prothonotary shall advise the party by letter that the Court will take no further action in the matter.

Source

The provisions of this § 69.211 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363235).

§ 69.221. Preargument Matters; Applications, Motions and Petitions.

The Prothonotary shall promptly, after filing, submit preargument applications, motions and petitions requiring consideration by a Judge to the Chief Legal Counsel. The Chief Legal Counsel shall daily confer with the President Judge or the Duty Judge on such matters, who shall act by order granting or denying the relief or remedy sought, directing the matter to be decided on submitted briefs, or listing the matter for argument before, or in conjunction with, argument on the merits of the appeal. Applications for extensions of time and/or continuances shall be acted upon as soon as practicable unless the Judge determines an answer is necessary, in which case the Court may order an expedited answer.

Source

The provisions of this § 69.221 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363235).

§ 69.222. Preargument Matters; Arguments and Evidentiary Hearings.

If an application pending appeal merits or requires an evidentiary hearing or argument, the President Judge or the Duty Judge shall list the matter for hearing or argument at the earliest opportunity consistent with appropriate notice and any applicable statutory provisions or procedural rules, for disposition consistent with the procedure governing matters within the original jurisdiction of the Court.

Source

The provisions of this § 69.222 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363235).

§ 69.223. (Reserved).

Source

The provisions of this § 69.223 reserved January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.231. Briefs; Advance Reading.

Briefs timely filed as to cases to be heard by the Court at its regular argument sessions are read in advance of oral argument by the Judges participating in an

en banc session as to cases so listed, and by the Judges participating in a panel session as to cases listed before the panel to which a Judge is assigned. Counsel should prepare for oral argument consistent with the practice of this Court.

Source

The provisions of this § 69.231 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.232. Briefs; Submission of Cases on Briefs.

Where cases are to be submitted for decision upon the briefs without oral argument, either by determination of the Court or by leave to do so at the request of one or more of the parties, the Prothonotary shall so designate them if they appear upon argument lists. Apart from argument lists, the President Judge shall appoint additional panels, designated as “Submission Panels,” for the disposition of cases thus submitted.

Source

The provisions of this § 69.232 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.241. Arguments; Sessions.

Argument sessions of the Court shall be annually fixed by order of the Court, the particular days to be devoted to en banc and panel sessions, or combinations thereof, to be determined by the President Judge. The President Judge shall allocate cases to be heard by panels or by the Court en banc, except as otherwise directed by the Court as to particular cases.

Source

The provisions of this § 69.241 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.242. Arguments; Preparation of Lists.

To aid the President Judge in the allocation of cases to be heard by the Court en banc or by panels, the Prothonotary shall submit an analysis of the procedural posture and issues raised in each case ready for argument. The Chief Legal Counsel shall review the list of cases, and present to the President Judge recommendations as to cases on the list to be heard by the Court en banc or by a panel. The President Judge shall review the proposed argument list and make any changes deemed necessary. As approved or as modified by the President Judge, the Prothonotary shall proceed to publish the argument list and give notice to litigants. The argument list as published shall disclose a day certain for argument of each case listed.

Source

The provisions of this § 69.242 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.243. Arguments; Number of Cases.

The President Judge and the Prothonotary shall determine the number of cases to be listed at a regular argument session before the Court en banc and before

panels, on the basis of expediting the disposition of cases ready for argument, to the maximum extent feasible.

Source

The provisions of this § 69.243 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363237).

§ 69.244. Arguments; Time Allowed.

As a general rule, the presiding Judge normally shall allow the parties on each side, including intervening parties, fifteen (15) minutes for argument in cases before the Court en banc and seven and one-half (7 1/2) to ten (10) minutes in cases before panels. Exercising discretion, the presiding Judge may nevertheless limit any argument to a shorter period pursuant to Pa.R.A.P. 2315(a) or may allow additional time.

Source

The provisions of this § 69.244 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363237).

§ 69.251. Decisions; Conferences and Assignments of Draft Opinions.

(a) After argument sessions and consideration of argued and submitted cases in a conference of the Judges comprising the respective Court en banc or panel, the presiding Judge shall assign each case to a Judge who represents the expressed majority view at the conference, for the preparation of the opinion of the Court.

(b) The opinion-writing Judge shall proceed to prepare a draft opinion in accordance with the decision of the Court en banc or of the panel or expressing any different views which the Judge may reach after subsequent study of the case, designated as an “Opinion” or “Memorandum Opinion” in accordance with § 69.413 below. The draft opinion shall ordinarily be one to be signed by the writer when final, but in appropriate cases it may be a briefer opinion recommended by the writer to be handed down per curiam. Except in the case of adoption of the reasoning in the opinion of the trial court, or where the appeal is meritless, the opinion shall state, at least summarily, the nature of the case, the principal question or questions involved, the holding of the court or agency below and the rationale of this Court’s decision.

Source

The provisions of this § 69.251 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363237).

§ 69.252. Decisions; Circulation of Draft Opinions.

When the draft opinion has been prepared, the opinion-writing Judge shall transmit it, normally within forty-five days after the date of assignment, to the other Judges, with a face sheet bearing the date the case was argued or submitted on briefs, and also with a memorandum in standardized form requesting them to inform the writer of (1) their agreement or disagreement with the opinion and order in accordance with these rules, together with any suggestions which they may desire to make with respect to the draft opinion, and (2) any disagreement as to the writer’s recommendation concerning reporting, in accordance with

§ 69.412. The writer shall also indicate by memorandum (1) when the draft proposes a result different from the tentative conference vote, and (2) when a proposed panel decision would overrule a previous panel decision of this Court. The other Judges shall respond to the opinion-writing Judge within fifteen days. If no response is received in that time, the opinion-writing Judge shall consider nonresponse as indicating that each Judge not responding is willing to have the opinion filed as circulated.

Source

The provisions of this § 69.252 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (363237) to (363238).

§ 69.253. Decisions; Concurrences and Dissents.

If a Judge on the Court en banc or the panel before which a case was argued, or to which it was submitted, responds by stating an intention to write a concurring opinion or a dissenting opinion, the opinion-writing Judge shall hold the opinion for an additional twenty days, during which period the concurring or dissenting Judge shall submit an opinion to the opinion-writing Judge, to be filed on the same date as the opinion of the Court. A dissenting or concurring Judge shall also inform all other Judges of such intention and shall circulate the opinion to them when written. The opinion-writing Judge shall consider concurrences and dissents and the reasons for them, and may revise the draft opinion and recirculate it. If a concurring opinion or dissenting opinion is not received by the opinion-writing Judge within the twenty-day period, the opinion writing Judge shall consider the previous intent to be waived and may proceed to file the opinion of the Court and any concurring opinions or dissenting opinions actually submitted to the opinion-writing Judge. A Judge on the Court en banc or panel may join in a concurring or dissenting opinion and shall so notify the opinion-writing Judge, who shall be responsible for noting the joinder of that Judge in such concurring opinion or dissenting opinion. When a Judge circulates a concurring or dissenting opinion, the opinion of the Court and any concurring or dissenting opinion may be filed no earlier than ten days after the circulation of the concurring or dissenting opinion.

Source

The provisions of this § 69.253 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363238).

§ 69.254. Decisions; Reassignments.

If, in connection with a draft opinion in circulation, a majority of the Judges who heard the case, or to whom it was submitted on briefs, decline to join in that opinion and favor a result or rationale contrary to it, the presiding Judge with respect to that case shall reassign it to a Judge who represents the new majority view.

Source

The provisions of this § 69.254 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363238).

§ 69.255. Decisions; Objections.

(a) If a Judge who is not a member of the en banc Court or of the panel before which a case is argued, or to which it is submitted, responds with an objection to the draft opinion, the opinion-writing Judge shall consider the objection and reasons for it, and may revise the draft opinion and recirculate it as deemed necessary.

(b) An objecting Judge shall also inform all other Judges of the objection and the reasons for it. An objection, however, shall not entitle the objecting Judge to file a concurring or dissenting opinion.

Source

The provisions of this § 69.255 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363238).

§ 69.256. Decisions; Effect of Disagreements.

(a) If a draft opinion in circulation in any case produces any combination of four or more proposed dissents, objections, or concurring opinions, the opinion-writing Judge shall not file the opinion but shall notify the President Judge to list the case for consideration at the next judicial conference. For purposes of this subsection the notation “concur in result only” shall not be considered in the foregoing combination. If, pursuant to vote after judicial conference consideration, a majority of all of the Judges, as well as a majority of the Judges who heard the case or to whom it was submitted on briefs, favor the result reached in the circulated draft opinion, that opinion, together with any concurring or dissenting opinions and notations of concurrences or dissents, shall be filed. Otherwise, if judicial conference consideration and vote does not warrant reassignment in accordance with § 69.254, the President Judge shall list the case for reargument before the Court en banc.

(b) When there exists a vacancy or a recusal among the Commissioned Judges that results in an even number of Commissioned Judges voting on a circulating panel opinion or en banc opinion, and when the vote of all participating Commissioned Judges results in a tie, the opinion shall be filed as circulated. The opinion shall contain a footnote on the first page indicating that the opinion is filed pursuant to this paragraph. Unless there is a majority vote of the participating Commissioned Judges to report, the opinion shall not be reported.

Source

The provisions of this § 69.256 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369585).

§ 69.257. Decisions; Overruling Previous Decisions.

Pursuant to the circulation of a draft opinion accompanied by a notation in accordance with § 69.252 that the proposed panel decision would overrule a previous panel decision, if a majority of the Court agrees that such an overruling would result, the President Judge shall list the matter on the agenda of the next judicial conference for consideration as to reargument.

Source

The provisions of this § 69.257 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369585).

§ 69.258. Decisions; Election Law Appeals.

The procedures of §§ 69.252—69.257 shall not apply to election law appeals heard by a special Court en banc or panel. The members of a special Court en banc or panel, under the supervision of the President Judge or presiding Judge, shall reach and file their decision, together with concurrences and dissents, if any, as soon as possible, without circulation to, or participation by, the Judges not sitting on the respective special Court en banc or panel.

Source

The provisions of this § 69.258 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (369585) to (369586).

§ 69.259. Decisions; Informational Circulation.

When circulating draft opinions, memoranda, responses, dissenting opinions, concurring opinions, comments and other matters pursuant to §§ 69.252—69.258, the Judges shall also circulate copies for information to Senior Judges not members of the respective Court en banc or panel.

Source

The provisions of this § 69.259 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369586).

§ 69.261. Decisions; Notation of Recusals.

If a Judge anticipates recusal with respect to a case on which the Judge has been assigned to sit, the Judge shall notify the presiding Judge of the Court en banc or panel as soon as possible. A Commissioned Judge may also be recused with respect to responding with an objection or no objection under § 69.255. For the information of the Judge who, as the writer of the opinion of the Court, has the responsibility for preparing the opinions to be filed in accordance with § 69.262, a recused Judge, whether sitting on the particular Court en banc or panel or not, shall communicate the fact of recusal by notation upon the response form or in writing otherwise. The Judge responsible for preparing the opinions to be filed shall have the non-participation of a Judge noted upon the majority opinion of the Court, whether such Judge was sitting as a member of the Court en banc or panel or not.

Source

The provisions of this § 69.261 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369586).

§ 69.262. Decisions; Filing.

When the opinion of the Court and any accompanying concurring opinions or dissenting opinions are ready to be filed, the opinion-writing Judge shall transmit to the Prothonotary the original opinions and such number of copies as the Pro-

thonotary shall from time to time specify, with each opinion of the Court bearing notations as to any Judges who dissent without opinion, who concur in the result only, and who are recused. The Prothonotary shall file, docket, and distribute the opinions. The writer shall sign the original of each opinion, except that, in the case of a per curiam opinion, the writer shall identify authorship by accompanying memorandum. To enable the opinion-writing Judge to carry out this responsibility, any Judge writing a concurring opinion or dissenting opinion shall deliver to the opinion-writing Judge a sufficient number of copies. The opinion-writing Judge shall date the opinion and any concurring opinions or dissenting opinions with the filing date.

Source

The provisions of this § 69.262 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369586).

§ 69.291. Rearguments; Petitions for Reargument.

The President Judge shall distribute petitions for reargument and answers to them, involving cases decided by a panel of the Court or the Court en banc, to all Judges of the Court. See Pa.R.A.P. 2542 et seq. After consideration pursuant to such circulation, the vote of the majority of the Commissioned Judges to grant or deny the petition for reargument shall govern, although comments from the Court's Senior Judges shall be solicited. Where a party files an application for reargument of an order issued by a single Judge, the Chief Legal Counsel shall submit the application, together with any answer, to that Judge for action, in accordance with Pa.R.A.P. 123(e).

Source

The provisions of this § 69.291 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394675).

ORIGINAL JURISDICTION

§ 69.301. General; Applicability of Appellate Jurisdiction Procedures.

Sections 69.221 through 69.262, inclusive, of these Internal Operating Procedures under Appellate Jurisdiction, shall govern proceedings in original jurisdiction matters when those proceedings are before Courts en banc and panels. Election law matters assigned to a special Court en banc or panel shall be subject to § 69.258.

Source

The provisions of this § 69.301 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394675).

§ 69.311. Pretrial Matters; Applications, Motions, Petitions and Praecipes.

The Prothonotary shall promptly, after filing papers in original jurisdiction cases, submit pretrial applications, praecipes for trial after a case is at issue, petitions for summary judgment or for judgment on the pleadings, statutory enforcement proceedings requiring a hearing before a Judge, praecipes for hearing in

matters under Pa.R.A.P. 1571, and all other motions and matters requiring the consideration of a Judge before trial or argument on the merits, to the Chief Legal Counsel, who shall, on a daily basis, confer with the President Judge or Duty Judge on such matters. Depending upon the nature of the matter, the President Judge or the Duty Judge shall by order set the matter down for evidentiary hearing or formal trial, for argument before a single Judge in cases in which a single Judge may dispose of the matter, for argument before the Court en banc or a panel, or for other disposition consistent with the applicable Rules of Appellate Procedure or Rules of Civil Procedure.

Source

The provisions of this § 69.311 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394675).

§ 69.312. Pretrial Matters; Subpoenas.

Subpoenas of the Court may issue from the Office of the Prothonotary.

Source

The provisions of this § 69.312 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (394675) to (394676).

§ 69.313. Pretrial Matters; Pretrial Orders.

To govern the expeditious disposition of matters filed within the Court's original jurisdiction, pretrial orders may regulate discovery, set a pretrial conference, require consideration of settlement, make provision for the identification of issues, establish a procedure for the acceptance of evidence through stipulations, provide for the advance exchange of exhibits and experts' reports, and limit the number of witnesses, together with all other matters which the Judge shall deem proper.

Source

The provisions of this § 69.313 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394676).

§ 69.321. Proceedings; Election Cases.

Proceedings under the Pennsylvania Election Code within the Court's original jurisdiction (petitions for review in the nature of mandamus and objections to nomination petitions and papers) shall be under the direct supervision of the President Judge, the Prothonotary and the Chief Legal Counsel. The President Judge, to dispose of such cases, shall establish a special election Court schedule, assign Judges to hear cases or, when necessary, convene a special Court en banc or panel to hear the same promptly.

Source

The provisions of this § 69.321 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394676).

§ 69.322. Proceedings; Costs of Transcripts of Testimony.

In any proceeding where a stenographer is present, the Presiding Judge or Duty Judge shall, incident to the disposition of the proceeding, provide by order for the allocation of the costs for the stenographer. Such costs normally include the appearance fee and the cost for the transcription of the notes of testimony, if the Court orders transcription or the filing of a notice of an appeal requires it. Upon receipt of such an order, the Prothonotary shall forthwith bill the responsible party. If the responsible party fails to pay the amount due within thirty days of the date of the bill, the Court shall impose appropriate sanctions to enforce payment.

Source

The provisions of this § 69.322 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394676).

§ 69.331. Reargument; Applications for Reargument.

When a party files an application for reargument of an order issued by a single Judge, see Pa.R.A.P. 2541 et seq., the Chief Legal Counsel shall submit the application, together with any answer, to the Judge for action, in accordance with Pa.R.A.P. 123(e). When a party files an application for reargument of an order issued by a panel of the Court in its original jurisdiction, the President Judge shall distribute the application and any answers thereto, to all Judges of the Court, along with the recommendation of the authoring Judge.

Source

The provisions of this § 69.331 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394676).

§ 69.341. Process; Designation of Officials for Service of Process.

The Commonwealth Court is a court of Statewide jurisdiction. Therefore, for purposes of Pa.R.C.P. No. 400(d), an action commenced in this Court is deemed commenced in all counties of this Commonwealth. Accordingly, where service is to be effectuated within this Commonwealth by a sheriff, the sheriff of any county where service may be made is authorized to serve process issuing from this Court and does not need to be deputized.

Source

The provisions of this § 69.341 amended November 16, 2018, effective December 14, 2018, 48 Pa.B. 7208; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (394676) to (394677).

§ 69.342. Process; Designation of Officials for Execution of Bench Warrants of Arrest.

By order in a particular case, a Judge may designate the Pennsylvania State Police or the sheriff of any county where the bench warrant may be executed as the official agency for the execution of a bench warrant of arrest.

Source

The provisions of this § 69.342 amended November 16, 2018, effective December 14, 2018, 48 Pa.B. 7208; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394677).

DECISIONS**§ 69.401. Issuance of Decisions; Orders and Opinions.**

On the day each order or opinion and order is filed, the Prothonotary shall send a copy to each counsel of record or pro se litigant. In matters on appeal from a trial court, the Prothonotary shall send a copy of the opinion to the trial judge. The Prothonotary shall also promptly distribute copies of opinions, when designated to be reported, to the list of distributees of opinions of the Commonwealth Court, as from time to time approved by the President Judge.

Source

The provisions of this § 69.401 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394677).

§ 69.412. Reporting of Opinions; Determination as to Reporting.

(a) Each Judge who is the author of an opinion of a panel or the Court en banc shall indicate, in circulating the opinion to the other members of the Court, the authoring Judge's recommendation as to whether the opinion shall be reported. A decision generally should be reported when it:

- (1) establishes a new rule of law;
- (2) applies an existing rule of law to facts significantly different than those stated in prior decisions;
- (3) modifies or criticizes an existing rule of law;
- (4) resolves an apparent conflict of authority;
- (5) involves a legal issue of continuing public interest; or
- (6) constitutes a significant, non-duplicative contribution to law because it contains:
 - (i) an historical review of the law,
 - (ii) a review of legislative history, or
 - (iii) a review of conflicting decisions among the courts of other jurisdictions.

The recommendation shall govern the determination as to reporting, unless a majority of the Commissioned Judges disagrees with it.

(b) Except as provided in subsection (c) (relating to single Judge opinions in election law matters), opinions of a single Judge shall be filed but not reported unless, because of the unique character of the case, the Chief Legal Counsel or the authoring Judge shall recommend that the opinion be reported and two-thirds of the Commissioned Judges shall concur with the recommendation.

(c) Opinions of a single Judge or a special Court en banc or panel in election law matters, original and appellate jurisdiction, shall be filed but not reported. Thereafter, the Chief Legal Counsel or authoring Judge may recommend that the opinion be reported. The recommendation shall be transmitted to the Court, together with a copy of the unreported opinion and order, requesting the Judges to indicate (1) their agreement or disagreement with the opinion and order, and (2) any disagreement as to the writer's recommendation concerning reporting. If

two-thirds of the Commissioned Judges vote or agree with the opinion and order and the recommendation concerning reporting, the unreported opinion and order shall be reported.

Source

The provisions of this § 69.412 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (394677) to (394678).

§ 69.413. Reporting of Opinions; Designation as to Reporting.

Each opinion which is to be reported shall be designated as an “OPINION.” Each unreported opinion shall be designated as a “MEMORANDUM OPINION,” its face sheet shall bear the advice, “OPINION NOT REPORTED,” and the Court’s docket shall note that it is an unreported opinion.

Source

The provisions of this § 69.413 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394678).

§ 69.414. Citing Judicial Opinions in Filings.

(a) An unreported opinion of this Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel. Parties may also cite an unreported panel decision of this Court issued after January 15, 2008, for its persuasive value, but not as binding precedent.

(b) Except as provided in subsection (d) (relating to single-Judge opinions in election law matters), a single-Judge opinion of this Court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.

(c) A reported opinion of the Court en banc or panel may be cited as binding precedent.

(d) A reported opinion of a single Judge filed after October 1, 2013, in an election law matter may be cited as binding precedent in an election law matter only. For purposes of § 414, “an election law matter” is one that involves the content of a ballot for the next ensuing election.

Source

The provisions of this § 69.414 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended July 16, 2015, 45 Pa.B. 3975; amended March 10, 2017, effective immediately, 47 Pa.B. 2101; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394678).

§ 69.415. Reporting of Opinions; Adoption of Trial Court Opinions.

When a reported opinion of the Court, whether per curiam or signed by a Judge, adopts the trial court’s opinion in its entirety, the opinion shall cite a publication containing the trial court opinion when possible; the citation may be to a reporter in which the trial court opinion has been published or to District & County Reports, if publication of the trial court opinion in that reporter is anticipated. If the opinion of this Court so adopting a trial court opinion is unreported, the opinion shall include a reporter citation with respect to the trial court opinion only if it has in fact been reported in a publication.

Source

The provisions of this § 69.415 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (394678) and (369591).

§ 69.416. Reporting of Unreported Opinions.

After an opinion has been filed as unreported, the Court, at any time on its own motion or on the application of any person, may order the opinion to be reported. Applications to report unreported opinions shall be filed within 30 days after the filing of the opinion, and, except as otherwise provided in § 69.412(c), may be granted by majority vote of the Commissioned Judges.

Source

The provisions of this § 69.416 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369591).

MISCELLANEOUS**§ 69.501. Mediation.****(a) Scope; Costs; Mediation Judge; Form of Papers.**

(1) To facilitate settlement and otherwise assist in the expeditious resolution of matters before the Commonwealth Court, appeals of orders of the courts of common pleas, petitions for review of state administrative agency decisions filed in the Court's appellate jurisdiction, and matters filed in the Court's original jurisdiction may be selected for mediation by the Court's Mediation Program.

(2) Tax appeals from orders of the Board of Finance and Revenue, which are subject to a status conference program, shall be excluded from the Mediation Program.

(3) Mediation shall be offered at no cost to the parties.

(4) Mediation shall be conducted by a Mediation Judge. The Mediation Judge may dispose of motions related to the scheduling of mediation and the mediation process. The Mediation Judge shall have authority to impose any necessary sanctions for the failure of any attorney or party to comply with the requirements of the Mediation Program.

(5) The mediation statement required by this section, and any other documents prepared for submission to the Mediation Judge, shall follow the format required by Pa.R.A.P. 124(a).

(b) Selection of Cases and Scheduling; Mediation Statement.

(1) Counseled matters shall be screened for referral to mediation immediately upon the filing of the Docketing Statement and all attachments as required by Pa.R.A.P. 3706. Any matter not initially screened or selected for mediation may be referred to the Mediation Program at any time upon request of any party or at the direction of any Judge, en banc or three-judge panel of the Court.

(2) After a matter has been selected for mediation, the Prothonotary shall notify the parties of the referral to the Mediation Program and the name of the

Mediation Judge assigned to conduct mediation. The Mediation Judge, when appropriate, shall promptly contact the parties to establish the location, date and time for mediation.

(3) Within ten days of receiving notice of mediation, or as otherwise directed, each party shall submit to the Mediation Judge a confidential mediation statement of no more than five pages, setting forth the positions of the party as to the key disputed and undisputed facts and legal issues in the matter, and stating whether prior settlement negotiations have occurred. The mediation statement shall focus on practical considerations in the matter and the party's good faith position on resolving issues by compromise and agreement. The mediation statement shall also identify any motions filed in Commonwealth Court and their disposition. The mediation statement shall not be filed with the Prothonotary or served upon opposing parties, and shall remain confidential.

(4) All matters referred to mediation shall remain subject to the Court's normal scheduling for briefing and oral argument. The Prothonotary shall not modify the Court's briefing or oral argument schedule unless so directed by the Mediation Judge to accommodate mediation.

(c) *Sessions; Confidentiality; Settlement; Effect of Mediation.*

(1) All mediation sessions must be attended by each unrepresented party and counsel for each represented party with authority to settle the matter and, if required, such other persons with actual authority to negotiate a settlement, whether involving the Commonwealth of Pennsylvania, a local government unit, or an individual litigant. The Mediation Judge may at his or her discretion require the parties (or real parties in interest) to attend mediation. In cases involving the Commonwealth government, upon direction of the Mediation Judge, counsel shall have available someone from the appropriate agency with authority to settle who can be reached during mediation to discuss settlement if such person is not already required to attend the mediation session. In the alternative, the Mediation Judge may obtain the name and title of the government official or officials authorized to settle on behalf of the state or local government unit.

(2) No future mediation shall be conducted unless the Mediation Judge determines that further sessions are necessary to effectuate a settlement. The Mediation Judge assigned to mediate a matter shall attend all future mediation sessions scheduled in the case.

(3) All participants in the Mediation Program shall act with due diligence and in good faith.

(4) The Mediation Judge shall not disclose the substance of the mediation settlement discussions and proceedings, and counsel likewise shall not disclose such discussions and proceedings to anyone other than their clients or co-counsel. No information obtained during settlement discussions shall be construed as an admission against interest, and the parties shall not use any information obtained during settlement discussions as the basis for any motion or application other than one related to the Court's briefing or argument sched-

uling. All mediation information, documents and communications are to be kept strictly confidential, not to be used or disclosed outside of mediation. All statements made in the course of mediation are for mediation purposes only and are not to be construed as representing the official position of the Mediation Judge, the Court, or any employee thereof.

(5) Where settlement is reached, the parties shall prepare a written settlement agreement and obtain all necessary signatures of the parties and counsel. The agreement shall be binding upon the parties to the agreement, and after execution or any necessary approval by a tribunal, the parties shall file a stipulation of dismissal within ten days thereof. Where necessary or upon the request of a party, the Mediation Judge may enter an appropriate order approving the settlement or remanding the matter to the tribunal below for its approval, enforcement, or implementation.

(6) Any matter not resolved by mediation shall remain on the Court's docket and proceed as if mediation had not occurred.

(7) A Mediation Judge who reviewed a mediation statement or conducted a mediation session shall not participate in any decision on the merits of the matter. Upon the termination of mediation, either through settlement and dismissal or through a continuation of the matter and final disposition on the Court's docket, the Mediation Judge shall dispose of all documents obtained during mediation.

Official Note: The Commonwealth Court Mediation Program was established and initially governed by Order dated September 15, 1999, effective January 1, 2000. That Order has been withdrawn and supplanted by this section.

Source

The provisions of this § 69.501 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (369591) to (369593).

§ 69.502. Pennsylvania Cable Network (PCN) Guidelines.

(a) *General Provisions*

(1) From the date of these Guidelines until further order of this Court, the recording by PCN of en banc proceedings before Commonwealth Court for future broadcast on PCN is permissible only in accordance with these Guidelines.

(2) Three business days advance notice is required of a request to be present to record a scheduled en banc proceeding electronically for future broadcast on PCN electronically. Such requests must be submitted to the Executive Administrator for approval by the President Judge. The President Judge, or presiding Judge of the en banc panel will retain the authority, in the Judge's sole discretion, to prohibit camera coverage of any proceeding.

(3) There shall be no coverage of an en banc proceeding involving any case that the Court has designated SEALED, or of any case involving the expungement or the refusal to expunge founded or indicated reports of child abuse.

(4) The President Judge, or presiding Judge of an en banc proceeding may limit or terminate coverage, or direct the removal of camera coverage personnel when necessary to protect the rights of the parties or to assure the orderly conduct of the proceedings.

(5) No expense by Commonwealth Court is to be incurred for equipment, wiring or personnel needed to provide coverage by PCN.

(6) Introductory commentary, if any, shall be supplied by members of the Pennsylvania Bar approved by the Board of Judges of the Commonwealth Court.

(7) All coverage must be gavel-to-gavel, including any rebroadcasts, with the exceptions of (a)(3) and (a)(4).

(8) All copyrights to the broadcasts are the possession of the Commonwealth Court of Pennsylvania and may not be used without the approval of the Commonwealth Court of Pennsylvania. PCN shall provide to the Court DVD or videotape recordings of all sessions covered by PCN, whether or not broadcasted.

(9) This shall become effective November 1, 2006.

(b) *Limitations*

(1) Camera coverage of en banc proceedings must be conducted in conformity with applicable statutes, national rules, any guidelines that may be issued by the U.S. Judicial Conference or the Supreme Court of Pennsylvania.

(2) There shall be no audio pickup or broadcast of conferences between co-counsel or among the Judges.

(c) *Equipment and Personnel*

(1) Only two television cameras, with one operator per camera, and one small robotic camera, will be permitted in the courtroom. The Executive Administrator, or designee, shall identify the location in the courtroom for the camera equipment and operators.

(2) Equipment shall not produce distracting sound or light. Signal lights or devices to show when the equipment is operating shall not be visible. Motorized drives, moving lights, flash attachments or sudden light changes shall not be used.

(3) Except as otherwise approved by the Executive Administrator, or designee, existing courtroom sound and light systems shall be used without modification. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the Court facility, or from a television camera's built-in microphone. If no technically suitable audio system exists in the Court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the Executive Administrator or designee.

(4) All equipment must be set up prior to the opening of the court session and may not be removed until after the conclusion of the day's proceedings. Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the courtroom. Camera opera-

tors shall not exit or enter the courtroom once the proceedings are in session except during a recess or adjournment. Camera operators shall wear suitable attire in the courtroom.

(5) PCN personnel shall adhere to the direction of the Executive Administrator, or designee, in such matters as security, parking, noise avoidance, and other related issues.

(d) *Impermissible Use of Material*

None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of an en banc proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any appeal of such proceedings.

Source

The provisions of this § 69.502 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (369593) to (369595).

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